

**TESTIMONY OF MALCOLM B. BOWEKATY
GOVERNOR OF THE ZUNI TRIBE
BEFORE THE UNITED STATE SENATE,
COMMITTEE ON INDIAN AFFAIRS
Presented July 17, 2002, Washington, D.C.**

Introduction

K:eshi. On behalf of the Zuni Tribe, I want to thank Chairman Inouye and Vice Chairman Campbell for convening this Oversight Hearing regarding the US Department of Interior and the protection of sacred places. This is an important subject to American Indians and Alaskan Natives, and one that has not been given the National attention it deserves.

The Zuni Salt Lake is a sacred place. Located southeast of our Reservation in west central New Mexico, this saline lake is a unique geological feature and home to our *Ma'lokyattsik'i*, Salt Mother. For centuries, indigenous tribes from the Southwest have made pilgrimages to the Zuni Salt Lake to request spiritual guidance and rain, make offerings, and collect salt for ceremonial, ritual and domestic use. The surrounding land has always been respected as a sanctuary zone, where warring tribes put weapons down and shared in the sanctity of the Salt Mother. Just this past weekend, our brothers and sisters from the Hopi, Yaqui, Pueblo, Xicano, Navajo and others joined us in a 260 mile run from Hopi and Phoenix to Zuni to pay homage to her, as well as to spiritually prepare us for this testimony today.

The Zuni Salt Lake is in real danger of disappearing. In the late 1980's, the Salt River Project (SRP), an Arizona-based power company, began purchasing land and applying for coal leases from the Bureau of Land Management. SRP proposes to develop an 18,000-acre coal strip mine 10 miles from the Lake. SRP also plans to use up to 85 gallons a minute of water a year for forty years for mining purposes. Finally, SRP proposes a forty-four mile railroad corridor from the proposed mine to the Coronado Generating Station, which would dissect pilgrimage trails used by tribes for centuries. Last month, to the dismay of the Zuni people, the Department of Interior approved the Life of Mine Plan, which gives federal government approval for this project.

Protection of the Zuni Salt Lake and Sanctuary Zone has always rested with the Zuni. In 1976, Senator Domenici from New Mexico testified to the US House Committee on Interior and Insular Affairs and fought hard to have this land given back to the Zuni Tribe:

This bill [S.877] will permit the Zuni Indian people to acquire a shrine that has been theirs for literally centuries. Government intervention and the inequities of history have prevented this great salt shrine from being included in the boundaries of their reservation. This is very important to their way of life, and is presently used by them as part of their religious culture.

Twenty five years later today, the Zuni Tribe feels that the US Department of Interior has failed us in its obligations under existing law and trust responsibility to continue to protect this sacred lake and associated cultural resources from destruction.

Environmental Protection

In 1990, the Bureau of Land Management issued an Environmental Impact Statement (EIS) for the proposed coal mine. This report was flawed scientifically with regard to hydrology and failed to capture the cultural importance of the Zuni Salt Lake. After repeated demands from the Zuni Tribe to then Secretary of Interior Bruce Babbitt and others, a supplemental EIS was conducted in 1996. Since its issuance of this SEIS, at least four major hydrological reports have been produced which invalidate or contradict information contained in the SEIS. Yet after several attempts by the past and current Zuni tribal councils, we received a letter recently from the Office of Surface Mining stating that DOI will base its decision on the 1996 SEIS and feels it not necessary to amend the environmental impact analysis.

That the National Environmental Policy Act (NEPA) is oriented toward *process* rather than *outcome* is a fact that the Zuni Tribe is well aware of. We are thankful that the recently approved federal Life of Mine Plan contains provisions that somewhat protect the aquifers that feed the Lake. However, it is unfortunate to realize that our Tribe had to go through such great lengths and expend resources it does not have to prove to the regulators that the original hydrological studies were flawed and biased toward the coal company. We believe that is not the intent of NEPA nor of the Department of Interior's implementing regulations. American Indians and Alaskan Natives protecting their sacred places should not have to carry the burden of proof with regard to environmental impact analysis for projects sponsored by federal agencies. The federal government must be more objective in its decisions and not bend toward industry.

Cultural Resource Protection

As we understand it, the National Historic Preservation Act of 1966 was originally created to protect architecture, not sacred places. There are subsequent problems with retrofitting this law when applying it to the protection of sacred places. For example, with regard to the protection of archeological sites and traditional cultural properties around the Lake, mitigation has meant digging, recording, and report writing. The Zuni Tribe feels that protecting the information of a site and then destroying it is not same as protecting the site itself. In other words, cultural resources are sacred not for the information they contain, but because they have been placed there by our ancestors for a purpose and should not be disturbed nor destroyed. This concept is very difficult to convey to federal agencies charged with compliance under the National Historic Preservation Act using standard western methodologies. A quick glance at eligibility requirements for inclusion in the National Register of Historic Places (36 CFR 60.4) will reveal that most sites are eligible under criteria D, information value.

This situation is exacerbated when applying scientific inquiry to burials and associated funerary objects. Needless to say, the Zuni Tribe finds it impossible to rationalize the displacement of our ancestor's burials for the sake of making money. Therefore the Zuni Tribe and other culturally affiliated tribes are extremely concerned with the desecration that will occur, given the density of Puebloan archeological sites recorded in the mining site and the nature of strip mining. Coupled with the fact that the implementation of the Native American Grave Protection Repatriation Act (NAGPRA) has had limited success with regard to actually protecting buries from desecration, we are struggling to come to a resolve on the issue with the federal government and the coal company.

While it is true that Section 106 of the National Historic Preservation Act and the National Park Service Bulletin 38 outline methods of consultation with American Indians and Alaskan Natives to protect cultural resources, the Zuni Tribe feels that the process does not work effectively. Navigating through the consultation process for this undertaking, the Zuni Tribe found itself in a bind when it comes to the release of esoteric information. While the federal agencies were very sensitive to our need to protect esoteric information, it was still difficult for us to convey the importance of specific cultural resources without giving away information that was esoteric. Also, a genuine sense of trust from the federal government is missing from the consultation process, as

we attempt to explain *that* a plant is sacred to us without stating *why* it is sacred to us.

Department of Interior Organization and Structure

The Zuni Tribe understands the difficulty the federal government has in dealing with competing interests. One of the major obstacles the Department of Interior has in protecting sacred sites like our Salt Lake stems from its organizational structure. The Office of Surface Mining has a mission to regulate mining; the Bureau of Land Management has a mission of leasing federal resources; and the Bureau of Indian Affairs has a mission to protect resources held in trust for American Indians by the United States government. Since these three offices are housed under one Department charged with making a decision either way on a particular issue, it stands to reason that one mission will override the other. This is evident in the number of disagreements and failed negotiations that took place within the DOI concerning whether to approve or disapprove the Life of Mine Plan.

Recommendations and Conclusion

- Engage tribes meaningfully in NEPA, NHPA and other processes early on. This sentiment was echoed in the recommendations by the National Research Council on *Hardrock Mining on Federal Lands*, commissioned by the US Congress in 1999 (National Academy Press, Washington DC, 1999, pg. 70).
- Create legislation similar to what Congressman Rahall is proposing in his draft *Native American Sacred Lands Act*. Legislation is needed due to the fact that the existing Executive Orders on the subject do not have the weight of law, existing laws are not working, and sacred sites are being destroyed at an alarming rate without the tools American Indian and Alaska Native governments need to engage industry and governments.
- Reorganize the decision-making process within the Department of Interior to better facilitate American Indian and Alaskan Native concerns over sacred places.

Thank you very much for the opportunity to speak with you today on this most important topic.

The Zuni Tribe is willing to work with your Committee and others in any way we can. E'lah:kwa.